

**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW JERSEY**

**IN RE: VALSARTAN PRODUCTS**  
**LIABILITY LITIGATION**

**STATUS CONFERENCE**

**CIVIL ACTION NUMBER:**

**19-2875**

Mitchell H. Cohen United States Courthouse  
One John F. Gerry Plaza  
Camden, New Jersey 08101  
April 24, 2019

**B E F O R E:**

**THE HONORABLE ROBERT B. KUGLER**  
**UNITED STATES DISTRICT JUDGE AND**  
**HONORABLE MAGISTRATE JUDGE JOEL SCHNEIDER**

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23  
24  
25 Certified as true and correct as required by Title 28,  
U.S.C., Section 753.

/S/ Carl J. Nami

1 (The following took place in open court)

2 THE DEPUTY COURT CLERK: All rise.

3 THE COURT: Good afternoon.

4 (All responded good afternoon)

00:26 5 THE COURT: Well, welcome back. Have a seat. When  
6 we last met, I told you all despite your skepticism, that you  
7 would enjoy Camden in the spring time. Am I right or wrong?  
8 Is this a delightful day or what? And you can't wait to come  
9 back. Right?

00:31 10 All right, since Mr. Nami doesn't know all of you, as  
11 you stand up, please tell us your name as we go on.

12 Now, Judge Schneider has been kind enough to fill me in  
13 on what he talked to you about this morning. But why don't we  
14 just go through the agenda items on the record. The  
00:31 15 plaintiffs' leadership. Is that all resolved now?

16 MR. SLATER: We believe it is, your Honor. The list  
17 that's in the agenda, there's a couple errors in it, but I  
18 don't know that you need us to read that to you now. But it's  
19 all resolved. As far as we know every firm that wanted to  
00:31 20 participate is a part of our leadership structure. Nobody was  
21 turned away.

22 THE COURT: Good.

23 MR. SLATER: And we have a large team now. We're  
24 looking forward to moving forward.

00:31 25 THE COURT: It's a pretty large team. I'm going to

1 open it up to the floor. Does anybody have any objection to  
2 the proposed leadership structure for the plaintiffs? None.

3 Okay. How about the defense side? I think it's  
4 important that we have a leadership structure there. Who  
5 wants to speak on that?

6 MR. TRISCHLER: May it please the court, Clem  
7 Trischler, your Honor. We have a four person leadership team.  
8 We've identified Mr. Goldberg, Miss Cohen, myself and Mr.  
9 Smith that represent API manufacturers, finish those

10 manufacturers, distributors and in addition retailers, select  
11 retailers who have requested an indemnification from our  
12 respective clients. And, so, from that perspective we believe  
13 that our leadership group generally represents the interests  
14 of the defense group at large. We recognize that we've got 41

15 I believe different defendants who are part of this MDL. We  
16 have invited other defendants to join and participate in the  
17 leadership structure. We have weekly telephone conferences  
18 amongst our defense group where we talk as a smaller group and  
19 then to the group at large to keep everyone abreast of

20 developments and our plans for handling the matters. We spoke  
21 after the good conversation we had with Judge Schneider this  
22 morning understanding some of the court's concerns about  
23 making certain that all of the interests of all of the  
24 defendants are being represented among the leadership. We

25 talked this afternoon and the consensus was at that time again

1 this afternoon that all of the defendants are satisfied with  
2 the current structure of our group. We recognize that the  
3 litigation may change. Things may unfold and we certainly  
4 will invite additional participation by anyone that wants to  
5 take part in our group as the litigation proceeds.

6 I would also point out that I think we had a very  
7 productive conference with the plaintiffs' leadership group  
8 between our morning session and this afternoon's session about  
9 how we deal with some of the smaller defendants who we don't  
10 have as prominent a role in the litigation and whether there  
11 are some mechanisms that we can put in place to perhaps  
12 eliminate those defendants from the litigation. I think I  
13 don't want to get ahead of ourselves since we're only dealing  
14 with the structure right now. But we have, we've opened a  
15 dialogue in that regard. We'll continue to have that dialogue  
16 and I think if we are able to put in place that structure,  
17 that that will eliminate perhaps the need for additional  
18 retailers who might, the court might want to see on the  
19 leadership group. But as a whole, I think I can speak  
20 collectively for the defendants who are now part of this  
21 litigation, that there's satisfaction with the four person  
22 leadership team that's been identified.

23 THE COURT: What do you want to call yourselves?  
24 Executive Committee or something?

25 MR. TRISCHLER: Defendants' Executive Committee I

1 think is what we've labeled ourselves in the papers filed with  
2 the court.

00:35 3 THE COURT: We need, for logistics purposes we need  
4 someone to be designated as liaison who would have the ability  
5 to forward notices to all of you. So you need to appoint, you  
6 need a person, you want a person to do that or two people to  
7 do that in whatever --

8 MR. TRISCHLER: My colleague Mr. Goldberg of Duane  
9 Morris has agreed to take on that task.

00:35 10 THE COURT: Okay. Great. Now you've mentioned and  
11 this -- I'm just curious about the indemnity agreements? Some  
12 of the downstream people are asking upstream people to  
13 indemnify them?

14 MR. TRISCHLER: That has occurred, yes, sir.

00:35 15 THE COURT: How is that going to get resolved?

16 MR. TRISCHLER: Well, presumably on a case by case  
17 basis.

18 THE COURT: Yeah.

00:35 19 MR. TRISCHLER: But I'm aware of instances where  
20 pharmacies have requested indemnification from their finish  
21 dose supplier and that indemnification obligation has been  
22 accepted. For instance, my client is Mylan Pharmaceuticals.  
23 We have been named in a Class Action lawsuit, consumer Class  
24 Action lawsuit where Rite Aid is a defendant. Rite Aid  
00:36 25 requested indemnification. Mylan Pharmaceuticals agreed to

00:36 1 indemnify Rite Aid in connection with that case. That's one  
2 instance I think of several, your Honor, where those  
3 indemnification issues are being addressed on a case by case  
4 basis, which is, you know, one of the factors why I believe  
5 and I think collectively the defense group believes that our  
6 structure as presently constituted is broad enough or casts a  
7 broad enough net to ensure that the interests of all of the  
8 entities are being met.

00:36 9 THE COURT: I'm just trying to think out loud about  
10 the prospects of the indemnity agreement to some of the work  
11 ahead for all of this. But, you know, we'll continue to talk  
12 about that. Thank you.

13 All right. I assume the plaintiffs have no comment  
14 about the defense leadership group?

00:37 15 MR. HONIK: We don't, your Honor.

16 THE COURT: Good. All right. Let's put off the  
17 service issues for a minute. Core discovery requests. I  
18 understand that Judge Schneider's going to issue an order on  
19 that, correct? Does everybody understand that?

00:37 20 MR. SLATER: Yes, your Honor.

21 MR. HONIK: Yes, your Honor.

22 THE COURT: Okay. The profile forms. The plaintiffs  
23 apparently you're still discussing that and you hope to  
24 finalize that by the end of May. Correct?

00:37 25 MR. NIGH: Yes, your Honor.

1 THE COURT: At the next meeting we can discuss this?  
2 If there's any dispute, we can resolve it, correct?

3 MR. NIGH: Yes, your Honor.

4 THE COURT: ESI protocol. You're still working on  
5 that. Again hopefully we'll have that done by the May  
6 meeting. Correct?

7 MR. HONIK: Yes, your Honor.

8 MR. SMITH: Your Honor, we have committed to  
9 identifying all by the end of the May meeting.

10 THE COURT: All right. Judge Schneider is going to  
11 enter a Protective Order. There's a Common Benefit Order that  
12 we should be entering pretty soon I understand. There are  
13 some tweaks that had to be made but apparently the plaintiffs  
14 have agreed to that, and we'll get that done.

15 The Master Complaints. There are competing proposals  
16 as to Master Complaints. Are there still competing proposals  
17 as to which ones?

18 MS. COHEN: Your Honor, Lori Cohen on behalf of  
19 defense. And I think although we did have competing proposals  
20 in the joint submission, as we discussed this morning, we're  
21 fine letting the plaintiffs basically go with their position.  
22 As they've stated, it's their choice and we'll obviously  
23 address any deficiencies we see.

24 THE COURT: So we'll go with the plaintiffs.

25 MS. COHEN: Thank you, your Honor.



1 THE COURT: All right. The other Sartans.

2 Apparently there's not going to be an application to JPML at  
3 this time, but perhaps in the future. Correct?

4 MR. NIGH: Your Honor, I've conferred with other  
5 counsel about their cases and we've looked at and we feel  
6 pretty confident there will be a JPML position. It's just a  
7 matter of timing for getting our ducks in a row for the  
8 Irbesartan, Losartan to be included into this MDL would be our  
9 request.

10 THE COURT: I'm sure it will be, but we'll wait to  
11 see what they do and you do.

12 MR. NIGH: Yes, your Honor.

13 THE COURT: I understand that there are two State  
14 Court complaints, PI complaints filed in Middlesex County, New  
15 Jersey? I heard.

16 MR. GOLDBERG: Yes, your honor, there are.

17 THE COURT: Are plaintiffs' counsel the same in both  
18 cases.

19 MR. GOLDBERG: I believe they are, yes.

20 THE COURT: And is that plaintiffs' counsel, does  
21 that plaintiffs' counsel have any cases here in the Federal  
22 action.

23 MR. GOLDBERG: I believe so. And I believe  
24 plaintiffs' counsel in this case is on the PI steering  
25 committee in the MDL as well.

1 THE COURT: Okay. Great. Counsel, you wanted to say  
2 something?

3 MR. ZAMORA: Your Honor, may I approach?

4 THE COURT: You sure may.

00:40 5 MR. ZAMORA: I'm appearing for Mr. Orlando in those  
6 two cases. I am Mark Zamora. The pending actions are Bruno  
7 versus Princeton and others in the Orlowsky cases which was  
8 just recently served. Those are two State Court cases, PI  
9 cases only in Middlesex County.

00:40 10 THE COURT: Have they been assigned to a specific  
11 Judge?

12 MR. ZAMORA: I believe so. I am not on that case as  
13 proactive at this moment. Mr. Orlando is out of State. I  
14 believe it has been assigned to one Judge.

00:40 15 THE COURT: Well, I would appreciate if somebody  
16 would give me that Judge's name and I can coordinate with that  
17 Judge.

18 MR. ZAMORA: Of course, Judge.

19 THE COURT: What's the -- you probably can't answer  
00:40 20 this, but the plaintiffs' counsel in those cases, I assume  
21 there's no diversity of jurisdiction. That's why they're in  
22 State Court. Correct?

23 MR. ZAMORA: I can't speak to that but I believe  
24 that's correct.

00:41 25 THE COURT: Okay. Do you know whether there's any

1 desire on the part of the plaintiffs in the State Court cases  
2 to move those cases along some different track than we're  
3 moving here?

00:41 4 MR. ZAMORA: Your Honor, I've only been involved in  
5 that case about ten days. I can't speak to that, but I think  
6 in coordination with the defense counsel, Mr. Goldberg and I  
7 and Mr. Nigh have spoken about coordination of discovery may  
8 be different than all.

00:41 9 THE COURT: All right. I can't imagine why it would  
10 be different, but there's no sense in doing it twice. I can  
11 tell you that.

12 MR. ZAMORA: I would agree, your Honor. I agree,  
13 your Honor.

00:41 14 THE COURT: And when we talk about proportionality,  
15 it doesn't make any sense but to take different discovery in  
16 those actions than you're going to take here.

17 MR. ZAMORA: I agree.

18 THE COURT: May I assume that there are going to be  
19 further State Court actions filed?

00:41 20 MR. ZAMORA: Yes.

21 THE COURT: Because there's a lack of diversity?

22 MR. ZAMORA: Yes.

23 THE COURT: Who is the non-diverse party on the  
24 defense side?

00:41 25 MR. ZAMORA: Well, the New Jersey defendants as far

1 as I can tell from just my review of the initial State Court  
2 filing would be all the defendants are being represented by  
3 counsel Goldberg which would be Solco, Princeton and I can't  
4 pronounce the third one, H-u-a-h-a-i.

00:42 5 THE COURT: Okay. All right. Well, I'll have to  
6 then find out who this Judge is and I'll get in touch with the  
7 Judge and we'll coordinate this.

8 MR. GOLDBERG: Your Honor, in the Bruno case where  
9 we've moved to dismiss those motions assigned to Judge  
00:42 10 Costello.

11 THE COURT: Costello.

12 MR. GOLDBERG: Yes.

13 THE COURT: He or she is in Middlesex County?

14 MR. GOLDBERG: Yes.

00:42 15 THE COURT: Okay.

16 MR. NIGH: Your Honor, I don't believe there's been  
17 any consolidation of those cases. So each case that gets  
18 filed in the State Court of New Jersey is in front of  
19 different Judges at this time. That's my understanding.

00:42 20 THE COURT: Well, I think it's in a mass drug  
21 program. So at some point they get thrown in a mass drug  
22 program.

23 MR. NIGH: They, they would have their own in  
24 Seattle, yes.

00:42 25 THE COURT: Yes. Okay.

00:43 1 MR. SLATER: Your Honor, as we had done I kind of  
2 closely coordinate with those cases, and the need to going  
3 forward, I'd be happy to provide that information. I  
4 understand the court's attitude towards that. So we're in  
5 agreement.

6 THE COURT: Sure.

7 MR. SLATER: We actually will talk to counsel about  
8 the motion to dismiss. He just mentioned as well as to see if  
9 it's something that needs to be heard now or maybe something  
00:43 10 that we need to understand what that issue is. So we'll talk  
11 about it.

12 THE COURT: All right. Document Repository. Have we  
13 resolved that issue? There's one repository, correct  
14 somewhere?

00:43 15 MR. GOLDBERG: Your Honor, at least on the  
16 defendants' side we still have some work to do. Judge  
17 Schneider raised a few issues about with us that we hadn't  
18 thought through yet. So we're going to work on that from the  
19 defense side. I understand plaintiffs have worked out their  
00:43 20 issues with respect to the repository.

21 MR. SLATER: Pretty much. Our plan, your Honor, is  
22 we will have our own repository for all the documents that we  
23 are provided by the defense that we'll work with and do our  
24 thing with. We're also going to create and we'll talk to the  
00:44 25 defense about it. There will be a repository where all the

00:44

1 plaintiff fact sheets, all the medical records, all the  
2 documents that are produced to the defendants will be put on  
3 there. They will have access to ID's and the court will also  
4 have access to all that information. So that you won't have  
5 to do any separate, you know, work with software or anything.  
6 We're going to make sure that it's user friendly for the court  
7 as well.

00:44

8 THE COURT: Great. Thank you. Are the plaintiffs  
9 doing any FOIA work for the FDA I assume?

10 MR. NIGH: There has been various plaintiffs'  
11 attorneys that have made FOIA requests, yes.

12 THE COURT: You'll share that with defense counsel so  
13 this all goes in the same repository and all that?

14 MR. NIGH: Yes.

00:44

15 THE COURT: Okay. Great. The downstream defendants.  
16 The minor players in this case which we've talked about last  
17 time and what to do about them. Any thoughts since then as to  
18 the best way that we can help them avoid unnecessary expense  
19 in this case?

00:45

20 MR. NIGH: Your Honor, we'd like to invite Marlene to  
21 address this issue on our procedure that were trying to enact  
22 on it.

23 THE COURT: Sure. Come on up here to the podium,  
24 would you please? Thank you.

00:45

25 MS. GOLDBERG: Marlene Goldberg, your Honor, for the

00:45 1 plaintiff. What we had just talked about in the interim was  
2 some kind of a shortened form that we could have those  
3 defendants fill out. It will contain some basic information,  
4 including where they got their Valsartan from. Insurance  
5 information and some basic financial. In exchange for that  
6 plaintiffs' counsel will take a look at it. We'll put in  
7 place a time frame so that things get resolved efficiently,  
8 and then we'll get back to those defendants and tell them, you  
9 know, if they're going to be dismissed without prejudice and  
00:45 10 then they'll go on a tolling agreement as well. And that  
11 we're going to iron out the details and we've agreed to talk  
12 throughout next week and hope to have something down very  
13 shortly.

00:46 14 THE COURT: Great. Thank you. You raised the issue  
15 of insurance. Have the defendants been disclosing insurance  
16 information to the plaintiffs yet?

17 MR. NIGH: No, your Honor. That is something that  
18 would also help us in terms of those other parties that are  
19 considered minor defendants.

00:46 20 THE COURT: Oh course. But apparently that will get  
21 worked out and you'll get that information. We need to get  
22 the insurance information to the plaintiffs relatively soon,  
23 please? Okay?

00:46 24 Now that we've got the Master Complaint issue resolved.  
25 The plaintiffs will start work on the short form complaint?

1 And maybe we can talk more about that at the next meeting?

2 All right. Service of process. I know you're  
3 discussing it among yourselves. What's the latest on the  
4 service of process issues that remains in this case? I know  
5 that some have been served under Hague. And a couple have  
6 agreed that they've been served. What about the rest of them?  
7 Where are we with that?

8 MR. TRISCHLER: Looking across the table to see who  
9 wants to go first, your Honor. I guess always take the  
10 opportunity to go first. Right? The -- to answer the court's  
11 question on service. There are issues, some issues have been  
12 resolved with respect to some defendants. For instance  
13 Torrent Pharmaceuticals as I understand is working out an  
14 agreement with plaintiffs to resolve service issues with  
15 respect to Torrent. ZHP, Mr. Goldberg's client I understand  
16 it have been served and there are no issues with respect to  
17 service on ZHP. As it relates to the remaining defendants,  
18 there are, there are issues and generally speaking it is the  
19 defendants' position that foreign defendants and that would  
20 include Mylan Laboratories Limited. Teva, Miss Cohen's  
21 client, Hetero, Aurobindo, those defendants, many of them whom  
22 are API manufacturers and we believe key defendants in this  
23 case are foreign corporations that need to be served pursuant  
24 to the Hague convention as a compromise of requiring service  
25 in each and every case, whether it be we end up with 30



1 plaintiff cases, three hundred plaintiffs' cases or three  
2 thousand. Who knows. But in lieu of requiring formal service  
3 in each and every case, which I believe is a matter of due  
4 process, the defendants would be entitled to, we propose, to a  
5 compromise where those foreign defendants would be served with  
6 each Master Complaint. We've now settled, we didn't know  
7 before today how many Master Complaints we were going to have  
8 and what form they were going to take. We've now come to an  
9 agreement that the plaintiffs are going to be filing three  
10 Master Complaints, personal injury, economic loss and medical  
11 monitoring. Our proposal is a compromise to ensure due  
12 process and fundamental fairness, and notice would be that  
13 each of the foreign defendants be served in accordance with  
14 the Hague Convention with each of those Master Complaints.  
15 That's generally our collective position. The plaintiffs I  
16 think obviously have some issues on individual cases, whether  
17 each defendant is required to be served pursuant to Hague and  
18 we can discuss those if the court would like. But as a, from  
19 a global perspective, that's the defendants' position.

20 THE COURT: How is it a less due process if you only  
21 get one complaint instead of three served by Hague?

22 MR. TRISCHLER: Because part of due process is fair  
23 notice to the claims that are being brought against you. If  
24 you're in this case, there's the defendants are presumably  
25 going to be sued for economic loss cases by third party

1 payers, by individual consumers, personal injury cases, by  
2 individuals who allegedly that are personally harmed. Of  
3 course, the medical monitoring claims. Part of service is  
4 being put on notice of the nature of the claims against you  
5 and we think that's a fair compromise.

6 THE COURT: The first complaint tells you that  
7 there's defects, contaminants in the product and that somebody  
8 wants money as a result of it. What difference does it make  
9 if that person wants money because he or she claims to have  
10 contracted cancer and wants money because they just want their  
11 money back. I mean do you really think that your client does  
12 not know when they're served with a Class Action medical  
13 monitoring case, for instance, that there's personal injuries  
14 involved in the case?

15 MR. TRISCHLER: Well, what that one complaint would  
16 tell, if we assume to take the Court's example that it's a  
17 personal injury case brought by Mr. Tack. T-a-c-k. That's  
18 one of the cases that has been brought against my client.  
19 That one complaint would put you on notice that this  
20 particular individual claims to have suffered injuries that  
21 are in some way related to the use or injection of a product  
22 that one or more of the defendants manufactured and sold.  
23 Doesn't put you on notice of other plaintiffs that have, that  
24 they've alleged to have injuries. It doesn't put you on  
25 notice of other damages that other plaintiffs may have. And I

1 think if we have four hundred cases in this MDL, we'd be  
2 entitled to be properly served in each of those four hundred  
3 cases. We're not asking for that. This is a compromise  
4 proposal that we be served and put on notice as the -- as Rule  
5 4 requires with respect to each of the types of cases that are  
6 before the court.

7 THE COURT: So do you really think that your  
8 sophisticated chemical manufacturer when they get a complaint  
9 from someone who claims to have been injured because of a  
10 contaminant in the product doesn't say ut-oh, there's more of  
11 these coming?

12 MR. TRISCHLER: I can't say what some person in India  
13 might think when they see a --

14 THE COURT: What would a reasonable person conclude?

15 MR. TRISCHLER: Depending upon their levels of  
16 sophistication, I don't know what that reasonable person might  
17 conclude. But what I do know is what the law requires. And  
18 the law requires more than being served once. If this, if  
19 this wasn't an MDL proceeding, there wouldn't a need to serve  
20 each and every one of those cases. It's a fundamental matter  
21 of jurisdiction. And I think our proposal is a reasonable  
22 compromise under the circumstances, particularly where you  
23 know we have a case that's taken on an interesting procedural  
24 life. And that is that we had an MDL established before the  
25 vast majority of the defendants were ever served with a

1 complaint. And --

2 THE COURT: I'm not sure that's unusual.

3 MR. TRISCHLER: Well, it's unusual in my experience.

4 And so, you know, technically none of the defense were ever

5 served with -- would never have to appear in this court until

6 such time of service. But we're not doing that. We're not

7 trying to create inefficiencies through this process. What

8 we're trying to do is work a fair compromise that provides the

9 jurisdictional and due process protections the defendants are

10 entitled to while allowing the litigation to move forward.

11 And I understand the court's comment that perhaps a person

12 could read one complaint and assume there are other claims and

13 assume that there are other damages. That all may be a

14 reasonable assumption, but we don't base jurisdiction on

15 assumptions and beliefs and what you might infer. And so

16 again, in order to ensure that due process is protected, I

17 don't think requiring service, Hague service of three

18 complaints is a tremendous burden under the circumstances.

19 THE COURT: What do the plaintiffs say?

20 MR. HONIK: Your Honor, these service issues come up

21 occasionally but not a lot. And suffice it to say from the

22 last time we were here in front of your Honor till today,

23 we've done quite a bit of research on it and with all due

24 respect to Mr. Trischler, I just don't think the starting

25 point is as he suggests first. It's, it's abundantly clear in

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1 MDL's in reported decisions some of which we put in our agenda  
2 letter to the court, but we're happy to brief in a one or two  
3 pager for the court if you desire, it's abundantly clear that  
4 single service putting the defendant notice of the bare  
5 allegations is sufficient, and that under Rule 4F3, the court  
6 has broad powers to then authorize alternative service. And  
7 the typical alternative service is once you have affected  
8 service of the master or central complaint, that reasonably  
9 puts on notice the defendant in question, you can then serve  
10 the defense counsel. And there are any number of cases that  
11 say just that, including a decision by the late Judge Ackerman  
12 in this very District that we can cite you to. 4F3  
13 alternative service is not service of last resort. It's a  
14 principal tool that Federal Courts are empowered to use to  
15 reasonably ensure that notice is required. Full stop.  
16 The second thing that, that if I'm listening carefully  
17 to Mr. Trischler, he's really conflating jurisdiction and  
18 service. They're really two different issues. And, so,  
19 effective service here can be done we believe by the service  
20 of one complaint because as your Honor has noted, all of the  
21 allegations are the same. The request for relief may vary  
22 from instance to instance, but the allegations are identical.  
23 And so let's take a further step back and not talk about it in  
24 the abstract. There are really only four defendants, foreign  
25 defendants about whom we have issues. Two of them I think are

1 simple Aurobindo and Hetero are two Indian API manufacturers  
2 who to my knowledge have not been served at all. And we think  
3 it's abundantly reasonable to serve some process on them one  
4 time through the Hague. Full stop.

00:56 5 With respect to the other two and in particular, Mylan  
6 and Teva, we believe for all intents and purposes they're in  
7 the case and I'll tell the court why. With respect to Teva,  
8 they have been served through the Hague in Israel with a TPP  
9 Class Action complaint. Their counsel is here of record on  
00:57 10 their behalf. We believe that that satisfies Rule 4. I think  
11 that, you know, that they should be in the case for all  
12 intents and purposes. So too with Mylan. Mylan is a Dutch  
13 corporation whose world headquarters is in Canonsburg,  
14 Pennsylvania. They have admittedly been served and in fact  
00:57 15 Mr. Trischler signed a waiver of service on behalf of the  
16 Andahlder and the parent company. So Mylan Pharmaceuticals,  
17 that's the company that actually got an FDA approval to sell  
18 this drug. They're in the case because Mr. Trischler has, has  
19 waived service on their behalf as well as of the parent. I  
00:58 20 don't know what else we can do to satisfy Rule 4. They're  
21 clearly sophisticated. Their world headquarters are here, and  
22 one of the things that Rule 4 contemplates is that extra  
23 territorial service of a foreign defendant can be affected in  
24 the U.S. on their subsidiaries. And in this case it's not  
00:58 25 even a close question because it's not a subsidiary that was

1 served. It was actually the parent which is Mylan MV as well  
2 as the Andaholder, Andaholder Mylan Pharmaceuticals because  
3 they're physically present in Pennsylvania. And even more  
4 than that, Mr. Trischler signed a waiver.

00:58 5 So, I think the only remaining issue is really what to  
6 do with the unserved Indian entities. I think a single  
7 complaint on them through the Hague is fine, and I think Mylan  
8 and Teva should be in for all intents and purposes.

00:58 9 THE COURT: Well, I don't know about Mylan and Teva.  
10 Is there an issue about that?

11 MR. TRISCHLER: There is, your Honor, and it gets  
12 fact specific which is why I avoided discussing it originally  
13 but I'm happy to address it now.

00:59 14 What Mr. Honik indicated first is not factually  
15 accurate. The Mylan Laboratories Limited is an India based  
16 company. They are the API manufacturer for Valsartan  
17 containing medications that are distributed in the United  
18 States by Mylan Pharmaceuticals Inc. Mylan has three approved  
19 formulations. The Andaholder, contrary to what Mr. Honik said  
00:59 20 the Anaholder for two of those is Mylan Laboratories Limited  
21 in India. Mylan Laboratories Limited in India has never been  
22 served in any case. Moreover no attempt to serve Mylan  
23 Laboratories has been made in any case. Instead, what Mr.  
24 Honik is referring to in a case where Mylan Laboratories  
00:59 25 Limited is not even sued and has not ever been sued, that a

01:00 1 waiver that was executed in the case against the parent  
2 company of Mylan Pharmaceuticals, Inc., Mylan MV, I executed a  
3 waiver for them. There is no law whatsoever that would  
4 suggest that a waiver by one corporation in a case where a  
5 foreign company has not even been sued, constitutes effective  
6 service on that foreign company. There is no law that would  
7 support that proposition. Mr. Honik referred to alternative  
8 service under Rule 4. He said it's not, it's not a tool of  
9 last resort. I can tell you it's not a tool of first resort.

01:00 10 And that is what the plaintiffs are proposing here. That as  
11 it relates to Mylan Laboratories Limited, they don't even have  
12 to attempt foreign service and the law is quite to the  
13 contrary. They do. And unless they want to present evidence  
14 that the parent corporation, which is Mylan MV, somehow

01:00 15 dominates the foreign corporation, as to be its alter ego and  
16 controls it, then they can try and effect service through Rule  
17 4 of the domestic entity, but they haven't done that either.  
18 They just don't even want to try. And here we are I think  
19 some four months after this MDL has been established, some six

01:01 20 months after lawsuits have been filed and they still haven't  
21 made a single attempt at service. Yet we're entering  
22 discovery which is fine. We're here to participate and not  
23 slow down the process. But at some point there comes a time  
24 when they have to try and make service before they ask this

01:01 25 court to resort to alternative service means. I can let Miss



01:01 1 Cohen speak to Teva in the issues Mr. Honik raised. But those  
2 are the issues with respect to Mylan, your Honor, and that is  
3 an attempt to evade the requirements of Hague service on an  
4 Indian company because a waiver was executed by another Mylan  
5 entity in a case where the Indian company was never even sued.

6 THE COURT: Teva.

01:02 7 MS. COHEN: Yes. Thank you, your Honor. Lori Cohen  
8 on behalf of the Teva entities. And I'll be brief. I do want  
9 to make this record so I'm not accused later of waiving any  
10 jurisdiction or venue. So I just wanted to make sure I was  
11 clear on this record that the entity we're talking about is an  
12 Israeli entity. Sorry about that. Teva Pharmaceutical

01:02 13 Industry Limited. It is an Israeli entity and like the U. S.  
14 Entity which is Teva Pharmaceuticals U. S. A. Inc. they're  
15 both Finish Dose manufacturers. As Mr. Honik said, the  
16 Israeli entity Teva Pharmaceuticals Industries Limited was  
17 served through the Hague. We're not objecting to it. We're  
18 not calling that deficient in one type of case. The MSP

01:02 19 recovery case which you may remember the last time I mentioned  
20 it was originally filed in Florida. We had a motion pending.  
21 So we do agree that service has been effectuated in that one  
22 case. Again, we're not waiving jurisdictional arguments. So  
23 we took the position as you saw in our position statement last  
24 time as well as this time that we want people served in the  
01:03 25 one complaint in each of the categories. Now we know there's

01:03 1 PI and medical monitoring, so we're asking that they attempt  
2 service again under the Hague consistent with Rule 4 in those  
3 other two categories of cases. And I think you've heard  
4 enough in terms of why that is that we've taken that position  
5 with Mr. Trischler. But I do want to make that clear to your  
6 Honor that that's our position.

7 THE COURT: So you want to make sure I understand  
8 that.

9 MS. COHEN: Yes.

01:03 10 THE COURT: Then Teva's position is that they have  
11 been served but they want to be served three times.

12 MS. COHEN: In the different categories of cases,  
13 yes, your Honor.

01:03 14 THE COURT: Right. The same as the Indian  
15 defendants.

16 MS. COHEN: Yes, your Honor.

17 THE COURT: All right. And it's Mylan though says  
18 they haven't served at all.

01:03 19 MR. TRISCHLER: Mylan Laboratories Limited, that's  
20 correct, your Honor.

21 THE COURT: Okay, I gotcha.

22 MS. COHEN: Thank you, your Honor.

01:03 23 THE COURT: All right, here's what we're going to do.  
24 As to the issue of whether there should be one complaint or  
25 three, one each of the three Master Complaints, seven days,

1 five page briefs from both sides and I'll decide that. As to  
2 the issue of whether Mylan has been successfully served, seven  
3 days, five page brief on this and I'll decide that issue.

4 Okay? Unless, of course, you can resolve it in the meantime.

5 All right, I think I've hit everything in the agenda.

6 Judge Schneider, did we miss anything?

7 MAGISTRATE JUDGE SCHNEIDER: I can't think of  
8 anything.

9 THE COURT: Anything else counsel wants to talk about  
10 at this time?

11 MR. SLATER: Your Honor, I don't know that you have  
12 to get too much into it with Mr. Smith and I. We discussed, I  
13 think we've reached an agreement on Torrent. But if you don't  
14 want to put it on the record, we'll do it separately.

15 MR. SMITH: We can do it separately.

16 MR. SLATER: Okay, that's fine.

17 THE COURT: Okay. Great. Anything else anyone else  
18 wants to say?

19 (No response)

20 THE COURT: All right.

21 MAGISTRATE JUDGE SCHNEIDER: We'll have our next  
22 conference call on May 8th. I might move that up to three  
23 o'clock because I have to leave earlier that evening.

24 MR. SLATER: Judge, I've been asked to relay  
25 something, but it impacts me too. The next hearing I think

1 we're scheduled May 22nd. I've been informed by multiple  
2 attorneys that apparently several of the colleges nearby,  
3 Rutgers and who else? Penn are all having graduation that day  
4 and people are already finding it hard to find rooms in town.

01:05 5 THE COURT: Judge Schneider has extra bedrooms.

6 (Laughter)

7 THE COURT: And he's very reasonable. You got to put  
8 up with the dog, though.

9 MR. SLATER: I'll say nothing else.

01:05 10 THE COURT: Well, we'll move it then. How about the  
11 following week? Wednesday the 29th at two o'clock? All  
12 right?

13 MR. SLATER: Thank you.

01:06 14 THE COURT: All right. Unless there's further  
15 business, I'll see you then, everybody. Thank you for coming  
16 and I won't see, I won't see you before Mother's Day, but  
17 those of you who are mothers, Happy Mother's Day, come May and  
18 honor your mothers.

19 (Laughter)

01:06 20 THE COURT: Thanks, everybody.

21 (The matter was then concluded)

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